

**BEFORE THE MINNESOTA
BOARD OF DENTISTRY**

In the Matter of
Harold G. Swennes, D.D.S.
License No. D8659

**STIPULATION AND ORDER FOR
LIMITED AND CONDITIONAL LICENSE**

The Minnesota Board of Dentistry ("Board") is authorized pursuant to Minn. Stat. ch. 150A, § 214.10, and § 214.103 to license and regulate dentists, to refer complaints against dentists to the Attorney General for investigation, and to take disciplinary action when appropriate.

The Board received a complaint against Harold G. Swennes, D.D.S. ("Licensee"). The Board's Complaint Committee ("Committee") reviewed the complaint and referred it to the Attorney General for investigation. Following the investigation, the Committee held a conference with Licensee. The Committee and Licensee have agreed that the matter may now be resolved by this stipulation and order.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between Licensee and the Committee as follows:

A. Jurisdiction. Licensee holds a license to practice dentistry in the State of Minnesota from the Board and is subject to the jurisdiction of the Board with respect to the matters referred to in this stipulation. Licensee states that Licensee does not hold a license to practice dentistry in any other jurisdiction and does not hold any other professional or occupational licenses.

B. Facts. This stipulation is based upon the following facts:

1. On February 15, 1990, the Board issued a stipulation and order based upon Licensee's improper prescribing of controlled substances to patients and a family member. On February 5, 1993, the Board issued an Order of Unconditional License to Licensee.

Inappropriate Prescribing

2. The Attorney General's investigation revealed several areas of concern regarding Licensee's prescribing of controlled substances, excessive prescribing of narcotic analgesics, and prescribing outside the scope of dentistry. In addition, there were numerous instances in which there was no documented examination, treatment, or prescribing rationale to correspond with dates of prescriptions. Further, several dental records revealed numerous instances in which prescriptions listed on pharmacy records were not documented in the dental records. Pharmacy and dental records provided the following examples of Licensee's inappropriate prescribing practices:

a. From February 14, 1999, to November 22, 2000, Licensee prescribed patient 1 (a family member) a total of 102 Tylenol #3 tablets and a total of 40 hydrocodone tablets, on dates when no dental examination or treatment was documented.

b. Licensee prescribed hydrocodone to patient 2 (a family member) on April 22 and August 4, 2000, and October 6, 2001. There is no examination or treatment of patient 2 on or near these dates documented in patient 2's dental records. None of the prescriptions are documented in patient 2's dental records. The only prescription documented in patient 2's dental records is on February 4, 2002, for 12 tablets of hydrocodone; however, there is no treatment documented for this date.

c. Licensee prescribed 20 hydrocodone tablets on January 16, 2000, and 18 hydrocodone tablets on June 7, 2000, to patient 3 (a family member). There is no record of the prescriptions in the dental records, and there is no examination or treatment documented for those dates. During the Attorney General's investigative interview, Licensee stated he prescribed a pain medication to patient 3 for her dental conditions and that he has done "pretty much everything" in terms of her treatment. Licensee stated he was not concerned that patient 3 had become addicted to hydrocodone.

d. Licensee provided 26 prescriptions for controlled substances to patient 4 (a family member) from November 28, 1997, to February 3, 2002. Twenty-two of the prescriptions were for Lorcet/hydrocodone, a total of 480 tablets. Four of the prescriptions were for Acetaminophen with Codeine #3, a total of 120 tablets. There is no documented examination, treatment, or prescription rationale for the dates of 22 of the prescriptions. Twelve of the prescriptions are not documented in the dental records. During an interview with the Attorney General's investigator, Licensee stated he prescribed to patient 4 due to a root canal treatment, crown, and bridge and extraction work he performed. Licensee admitted he did not examine or treat patient 4 every time he prescribed medications to him. Licensee stated all of the prescriptions for patient 4 were "dental-related," and he was not concerned about patient 4's use of the medications.

e. Licensee prescribed Acetaminophen with Codeine #3 to patient 5 on August 15, 2000, and February 13 and August 7, 2001. There is no documentation of an examination or treatment to correspond to the February 13, 2001, prescription. During the Attorney General's investigative interview, Licensee stated all of his prescriptions for patient 5 have been "dental-related."

f. Licensee provided 42 prescriptions for controlled substances to patient 6 from October 25, 1999, to January 14, 2002. Forty of the prescriptions were for Lorcet/hydrocodone, a total of 622 tablets. There were two prescriptions for Tylenol #3, a total of 34 tablets. There is no documented examination, treatment, or prescription rationale for the dates of 23 of the prescriptions. During the Attorney General's investigative interview, Licensee stated he prescribed a lot of Lorcet to patient 6, but whenever she requested medication, she always had teeth pulled and endodontic work performed, thereby substantiating the need for the medications. Licensee stated his prescribing for patient 6 could be viewed as excessive, but he does not want to be the "bad guy" and tell patients no in response to their requests for medication. Licensee admitted he is a "liberal prescriber."

g. Licensee provided 27 prescriptions of Darvocet-N 100 to patient 7, a total of 556 tablets, from March 31, 1999, to August 27, 2001. There is no documented examination, treatment, or prescription rationale for the dates of ten of the prescriptions. The November 17, 2000, prescription is not noted in the dental records. Licensee informed the Attorney General's investigator patient 7's prescriptions were for "gum flare-ups" and possibly some extractions. Licensee stated patient 7's case was more "nebulous" in regard to the patient's pain, and it may have been more difficult to ascertain whether or not patient 7 actually required the medication. Licensee admitted his prescribing to patient 7 may have been excessive.

h. Licensee provided 26 prescriptions for controlled substances to patient 8 from September 2, 1999, to September 19, 2001. Licensee provided 12 prescriptions for Percodan, a total of 218 tablets; two prescriptions for Tylox, a total of 48 tablets; and 12 prescriptions for Lorcet, a total of 214 tablets. There is no documented examination, treatment, or prescription rationale for the dates of 11 of the prescriptions. During the Attorney

General's investigative interview, Licensee stated his rationale for prescribing to patient 8 was based on the endodontic work, root canals, and "general stuff" he performed. A review of the patient record showed Licensee mostly placed restorations. Licensee admitted his prescribing for patient 8 may have been excessive.

i. Licensee provided six prescriptions for controlled substances to patient 9 from January 6, 2000, to September 10, 2001. Licensee provided four prescriptions for Percodan, a total of 70 tablets, and two prescriptions for hydrocodone, a total of 38 tablets. There is no documented examination, treatment, or prescription rationale for the dates of three of the prescriptions. The September 10, 2001, prescription for hydrocodone is not recorded in the dental records. During the Attorney General's investigative interview, Licensee stated he probably prescribed Percocet, a Schedule II drug, rather than a Schedule III drug, because patient 9 reported the Schedule III drug was ineffective. Licensee stated patient 9's prescriptions were for root canal treatment.

j. Licensee provided patient 10 six prescriptions for Demerol 50 mg, a total of 80 tablets, from August 6, 1997, to November 29, 2000. Licensee also prescribed 20 Percodan tablets during this period. There is no documented examination, treatment, or prescription rationale for the dates of two of the prescriptions. During the Attorney General's investigative interview, Licensee stated he prescribed Demerol to patient 10 because it was the only drug that seemed to work for her. He indicated he may have prescribed a less-potent drug to patient 10 in the past but switched to Demerol when the patient requested a stronger drug. Licensee stated he did not prescribe Demerol to patient 10 on a repetitive basis. He reported he may have prescribed it due to patient 10's root canal treatment. According to patient 10's dental records, Licensee placed restorations and referred patient 10 for endodontic treatment.

Prescribing Outside the Scope of Dentistry

3. Licensee has prescribed controlled substances outside the scope of his dental practice. Examples include the following:

a. During the Attorney General's investigation, Licensee stated he prescribed a pain medication to patient 11 (a family member) for back pain. Pharmacy records indicate Licensee prescribed the following medications to patient 11: April 13 and November 14, 2000, Claritin-D; January 23, 2001, Guiatuss AC syrup; June 25, 2001, Guiatuss AC syrup; and August 9, 2001, APAP/Codeine. There are no documented dental services in patient 11's dental records to correspond with these dates. Pharmacy records also indicate Licensee prescribed hydrocodone to patient 11 on December 29, 2001, which corresponds to the December 27, 2001 extraction of patient 11's wisdom teeth by an oral surgeon. This prescription is not recorded in the dental records.

b. Licensee admitted to the Attorney General's investigator that he prescribed a pain medication to patient 12 (a family member) "once or twice" for conditions that were "probably not dental-related." On one occasion, Licensee prescribed a pain medication after patient 12 was assaulted. Pharmacy records indicate Licensee prescribed APAP/Codeine 24 tablets to patient 12 on August 28, 2000, and Guiatuss AC syrup on June 25, 2001. The only documented dental service near the time of these prescriptions was an examination and prophylaxis on August 25, 2000. Neither prescription is documented in the dental records.

c. Pharmacy records indicate Licensee prescribed Zyban to patient 3 (a family member) for smoking cessation. Licensee also reported to the Attorney General's investigator he ordered Ventolin from a pharmaceutical company for patient 3's allergies and

associated breathing problems. Dental records also indicate Licensee prescribed patient 3 a Ventolin inhaler on November 21, 1997.

Unprofessional Conduct

4. Pharmacy and patient records indicate Licensee's partner prescribed the following to Licensee's family members: Lorcet on April 5 and 10, 1999; and March 22, April 15, and August 30, 2000, to patient 3; Tylenol #3 on August 9, 2001, to patient 11; and Zovirax on June 26, 2001, to patient 12. Licensee's partner could not recall signing the prescriptions. Patient records also indicate Licensee's partner provided treatment to Licensee's family members as follows: patient 3 on May 26, 1998, March 23, 1999, and August 25, 2000; patient 11 on May 26, 1998, and December 21, 1999; and patient 12 on May 26, 1998, and March 23, 1999. In his written response and/or during the conference with the Committee, Licensee stated he had provided all treatment to his family members and that a computer coding error created the incorrect records. Regarding the prescriptions signed by his partner, Licensee explained the errors may have been caused by his office's practice of allowing staff to sign computer-generated prescriptions and prescription refills for the dentist.

Inadequate Treatment Planning

5. At the conference with the Committee, Licensee was unable to articulate how he would develop a comprehensive treatment plan to address all of a patient's treatment needs. The Committee determined, based on Licensee's statements, that Licensee would benefit from instruction on treatment planning.

C. Violations. Licensee admits that the facts and conduct specified above constitute violations of Minn. Stat. § 150A.08, subd. 1(5) and (6), and Minn. R. 3100.6200A and 3100.9600 and are sufficient grounds for the disciplinary action specified below.

D. Disciplinary Action. Licensee and the Committee recommend that the Board issue an order which places **LIMITATIONS** and **CONDITIONS** on Licensee's license to practice dentistry in the State of Minnesota as follows:

LIMITATIONS

1. Licensee's license shall be subject to the following limitations:

a. DEA Certificate. Within ten days of the effective date of this order, Licensee shall surrender to the Board his Drug Enforcement Administration Certificate ("DEA Form 104") and provide two signed copies of DEA Form 104, Voluntary Surrender of Controlled Substances Privileges. Licensee shall personally deliver or mail the certificate and DEA forms to the Minnesota Board of Dentistry, c/o Marshall Shragg, Executive Director, 2829 University Avenue S.E., Suite 450, Minneapolis, Minnesota 55414. Licensee shall not apply for a new DEA certificate of registration until such time as Licensee successfully petitions for and receives an unconditional license from the Board.

b. Prescribing Limitation. Licensee is prohibited from prescribing, administering, or dispensing any controlled substances listed in Minnesota Statutes. Licensee is also prohibited from prescribing, administering, or dispensing any legend drugs for Licensee's own use or for Licensee's family members' use or prescribing, administering, or dispensing any legend drugs to patients for conditions not related to the practice of dentistry.

CONDITIONS

2. Directive to Staff. Within 30 days of the effective date of this order, Licensee shall prepare and submit to the Board a directive to all staff employed in his office that states only staff dentists may sign prescriptions or authorize prescription refills. The directive must be signed by all staff employed at Licensee's office.

3. Course Work and Consultation. Licensee shall successfully complete the course work and consultation described below. All course work must be approved in advance by the Committee. Licensee is responsible for locating, registering, and paying for all course work taken pursuant to this stipulation and order. If Licensee attends an undergraduate or graduate dental school course, Licensee must provide each instructor with a copy of this stipulation and order prior to commencing a course. Licensee shall pass all courses with a grade of 70 percent or a letter grade of "C" or better. Licensee's signature on this stipulation and order constitutes authorization for the course instructor(s) to provide the Committee with a copy of the final examination and answers for any course Licensee takes. Licensee's signature also authorizes the Committee to communicate with the instructor(s) before, during, and after Licensee takes the course regarding Licensee's needs, performance, and progress. None of the course work taken pursuant to this stipulation and order may be used by Licensee to satisfy any of the continuing dental education requirements of Minn. R. 3100.4100, subps. 1 and 2. The course work is as follows:

a. Record Keeping. Within six months of the effective date of this order, Licensee shall complete a minimum of four hours of instruction in professional risk management. This course may be one developed by CNA or another malpractice insurance carrier and must emphasize complete and accurate record keeping.

b. Professional Boundaries and Pain Management. Within six months of the effective date of this order, Licensee shall complete one-on-one consultation with John Hung, Ph.D., L.P., or another health professional approved in advance by the Committee. The consultation shall last eight hours or until such time as the consultant determines is sufficient to achieve the learning objectives, whichever is greater. In order for the Board to consider

approving a consultant other than Dr. Hung, Licensee shall submit or cause to be submitted the resume or curriculum vitae of the proposed consultant and proposed course outline. Licensee is responsible for arranging and paying for the consultant. The consultation shall address professional boundaries, including establishing and maintaining professional boundaries with patients complaining of chronic pain who may be exhibiting drug-seeking behavior. Licensee shall comply with any recommendations for additional education made by the consultant.

consultant shall submit a report directly to the Board, addressing the following:

- 1) Verification the consultant has reviewed a copy of this stipulation and order;
- 2) An evaluation of Licensee's understanding of the subjects of the instruction prior to beginning the consultation;
- 3) A description of the content and method of instruction provided during the consultation
- 4) A statement indicating what Licensee learned and achieved through the instruction and how the learning was evaluated;
- 5) Any recommendations for additional education directed at improving Licensee's practice; and
- 6) Any other information the consultant believes would assist the Board in its ultimate review of this matter.

c. Treatment Planning. At the earliest offering, Licensee successfully complete the individually designed treatment planning course offered through the University of Minnesota Continuing Dental Education Department ("CDE"). Licensee contact Marie Baudek of the CDE Department to obtain registration information. Licensee shall

pass this course with a grade of 70 percent or a letter grade of “C” or better. Licensee’s signature on this order constitutes authorization for the course instructor(s) to provide the Committee with a copy of the final examination and answers for this course and also for the Committee to communicate with the instructor(s) before, during, and after Licensee takes the course regarding Licensee’s needs, performance, and progress.

d. Written Reports and Information. Within 30 days of completing any course work or consultation taken pursuant to paragraph D.3. above, Licensee shall submit to the Committee one report for each course or consultation summarizing what he learned in the course or consultation and how he has applied this knowledge to his practice. The professional boundaries/pain management report shall include a copy of a written protocol establishing prescribing procedures for use in Licensee's office. All reports and information are subject to approval by the Committee. Licensee shall also submit to the Board a transcript or other documentation verifying that Licensee has successfully completed the course if the course is a graduate or undergraduate dental school course and a copy of all materials used and/or distributed in the course.

4. Jurisprudence Examination. Within 90 days of the effective date of this stipulation and order, Licensee shall take and pass the Minnesota jurisprudence examination with a score of at least 90 percent. Licensee may take the jurisprudence examination within the 90-day period as many times as necessary to attain a score of 90 percent; however, Licensee may take the examination only once each day. Within ten days of each date Licensee takes the jurisprudence examination, Board staff will notify Licensee in writing of the score attained.

5. Reimbursement of Costs. Licensee shall pay the Board the sum of \$3000 as partial reimbursement for the Board's costs in this matter. All payments shall be made by

certified check, cashier's check, or money order made payable to the Minnesota Board of Dentistry in two installments as follows: \$1500 within three months of the effective date of this order and \$1500 within one year of the effective date of this order or before petitioning for an unconditional license, whichever occurs first.

6. Other Conditions.

a. Licensee shall comply with the laws or rules of the Board of Dentistry. Licensee agrees that failure to comply with the Board's laws or rules shall be a violation of this stipulation and order.

b. Licensee shall fully and promptly cooperate with the Board's reasonable requests concerning compliance with this stipulation and order, including requests for explanations, documents, office inspections, and/or appearances at conferences. Minn. R. 3100.6350 shall be applicable to such requests.

c. In Licensee's practice of dentistry, Licensee shall comply with the most current infection control requirements of Minn. R. 3100.6300 and 6950.1000 through 6950.1080 and with the Centers for Disease Control and Prevention, Public Health Service, United States Department of Health and Human Services, *Recommended Infection-Control Practices for Dentistry, 1993*, MORBIDITY AND MORTALITY WEEKLY REPORT, May 28, 1993, at 1

d. If the Board receives a complaint alleging additional misconduct or deems it necessary to evaluate Licensee's compliance with this stipulation and order, the Board's authorized representatives shall have the right to inspect Licensee's dental office(s) during normal office hours without prior notification and to select and temporarily remove original patient records for duplication. Licensee shall fully and timely cooperate with such inspections of Licensee's office and patient records.

e. In the event Licensee should leave Minnesota to reside or practice outside the state, Licensee shall notify the Board in writing of the new location within five days. Periods of residency or practice outside of Minnesota will not apply to the reduction of any period of Licensee's discipline in Minnesota unless Licensee demonstrates that practice in another state conforms completely to this stipulation and order.

E. Removal of Limitations and Conditions. Licensee may petition to have the limitations and conditions removed from Licensee's license at any regularly scheduled Board meeting after completing the requirements set forth in paragraph D. above, provided that Licensee's petition is received by the Board at least 30 days prior to the Board meeting. Licensee shall have the burden of proving that Licensee has complied with the limitations and conditions and that Licensee is qualified to practice dentistry without limitations and conditions. Licensee's compliance with the foregoing requirements shall not create a presumption that the limitations and conditions should be removed. Upon consideration of the evidence submitted by Licensee or obtained through Board investigation, the Board may remove, amend, or continue the limitations and conditions imposed by this order.

F. Fine for Violation of Order. If information or a report required by this stipulation and order is not submitted to the Board by the due date, or if Licensee otherwise violates this stipulation and order, the Committee may fine Licensee \$100 per late report or other violation. Licensee shall pay the fine and correct the violation within five days after service on Licensee of a demand for payment and correction. If Licensee fails to do so, the Committee may impose additional fines not to exceed \$500 per violation. The total of all fines may not exceed \$5,000. Licensee waives the right to seek review of the imposition of these fines under the Administrative Procedure Act, by writ of certiorari under Minn. Stat. § 480A.06, by application

to the Board, or otherwise. Neither the imposition of fines nor correction of the violation will deprive the Board of the right to impose additional discipline based on the violation.

G. Additional Discipline for Violation of Order. If Licensee violates this stipulation and order, Minn. Stat. ch. 150A, or Minn. R. ch. 3100, the Board may impose additional discipline pursuant to the following procedure:

1. The Committee shall schedule a hearing before the Board. At least ten days prior to the hearing, the Committee shall mail Licensee a notice of the violation alleged by the Committee and of the time and place of the hearing. Within seven days after the notice is mailed, Licensee shall submit a response to the allegations. If Licensee does not submit a timely response to the Board, the allegations may be deemed admitted.

2. At the hearing before the Board, the Committee and Licensee may submit affidavits made on personal knowledge and argument based on the record in support of their positions. The evidentiary record before the Board shall be limited to such affidavits and this stipulation and order. Licensee waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

3. At the hearing, the Board will determine whether to impose additional disciplinary action, including additional conditions or limitations on Licensee's practice, or suspension or revocation of Licensee's license.

H. Other Procedures for Resolution of Alleged Violations. Violation of this stipulation and order shall be considered a violation of Minn. Stat. § 150A.08, subd. 1(13). The Committee shall have the right to attempt to resolve an alleged violation of the stipulation and order through the procedures of Minn. Stat. § 214.103, subd. 6. Nothing herein shall limit (1) the

Committee's right to initiate a proceeding against Licensee pursuant to Minn. Stat. ch. 14, or (2) the Committee's and the Board's right to temporarily suspend Licensee's license pursuant to Minn. Stat. § 150A.08, subd. 8, based on a violation of this stipulation and order or based on conduct of Licensee before or after the date of this stipulation which is not specifically referred to in paragraph B. above.

I. Attendance at Conference. Licensee attended a conference with the Committee on August 22, 2002. The following Committee members attended the conference: Susan Gross, D.D.S., Annie Stone Thelen, D.D.S., and Linda Boyum, R.D.A. Assistant Attorney General Ruth E. Flynn represented the Committee at the conference. Although Licensee was informed in the notice of conference that Licensee could be represented by legal counsel, Licensee has voluntarily and knowingly waived legal representation.

J. Waiver of Licensee's Rights. For the purpose of this stipulation, Licensee waives all procedures and proceedings before the Board to which Licensee may be entitled under the Minnesota and United States constitutions, statutes, or the rules of the Board, including the right to dispute the facts contained in this stipulation and order and to dispute the appropriateness of discipline in a contested proceeding pursuant to Minn. Stat. ch. 14. Licensee agrees that upon the application of the Committee without notice to or an appearance by Licensee, the Board may issue an order imposing the discipline specified herein. The Committee may participate in Board deliberations and voting concerning the stipulation. Licensee waives the right to any judicial review of the order by appeal, writ of certiorari, or otherwise.

K. Board Rejection of Stipulation and Order. In the event the Board in its discretion does not approve this stipulation or a lesser remedy than specified herein, this stipulation and order shall be null and void and shall not be used for any purpose by either party hereto. If this

stipulation is not approved and a contested case proceeding is initiated pursuant to Minn. Stat. ch. 14 and § 150A.08, Licensee agrees not to object to the Board's initiation of the proceeding and hearing the case on the basis that the Board has become disqualified due to its review and consideration of this stipulation and the record.


L. Record. This stipulation, related investigative reports and other documents shall constitute the entire record of the proceedings herein upon which the order is based. The investigative reports, other documents, or summaries thereof may be filed with the Board with this stipulation. Any reports or other material related to this matter which are received after the date the Board approves the stipulation and order shall become a part of the record and may be considered by the Board in future aspects of this proceeding.

M. Data Classification. Under the Minnesota Data Practices Act, this stipulation and order is classified as public data. Minn. Stat. § 13.41, subd. 4. All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13. They shall not, to the extent they are not already public documents, become public merely because they are referenced herein. Pursuant to federal rule (45 C.F.R. part 60), the Board must report the disciplinary action contained in this stipulation and order to the National Practitioner Data Bank.

N. Entire Agreement. Licensee has read, understood, and agreed to this stipulation and is freely and voluntarily signing it. This stipulation contains the entire agreement between the parties hereto. Licensee is not relying on any other agreement or representations of any kind, verbal or otherwise.

O. Service and Effective Date. If approved by the Board, a copy of this stipulation and order shall be served personally or by first-class mail on Licensee. The order shall be effective and deemed issued when it is signed by the President or Vice-President of the Board.

LICENSEE


HAROLD G. SWENNES, D.D.S.

Dated: 9-9-, 2002

COMPLAINT COMMITTEE

By: 
MARSHALL SHRAGG
Executive Director

Dated: 9/17/02, 2002

* * *

ORDER

Upon consideration of the foregoing stipulation and based upon all the files, records, and proceedings herein,

The terms of the stipulation are approved and adopted, the recommended disciplinary action set forth in the stipulation is hereby issued as an order of this Board placing **LIMITATIONS** and **CONDITIONS** on Licensee's license effective this 20th day of September, 2002.

MINNESOTA BOARD
OF DENTISTRY

By: 
FREEMAN ROSENBLUM, D.D.S.
President